

Jersey City Annual Zoning Board of Adjustment Report 2020

COMMISSIONER ROTHMAN:

“I like the appeals. It's very exciting. I hope you set yourself up and do great work and stamp "Made in Jersey City" on it.”

“I get it. You don't like it. None of you like it or you wouldn't be here. I get it. I don't need to get it for another hour and a half across the damn nation of ancient history. This has been decided.”

“We love those. We all buy our showerheads from Canada. My last question is, I didn't look up this definition, but my brain tells me that a plaza, pedestrian plaza, is something without vehicular traffic.”

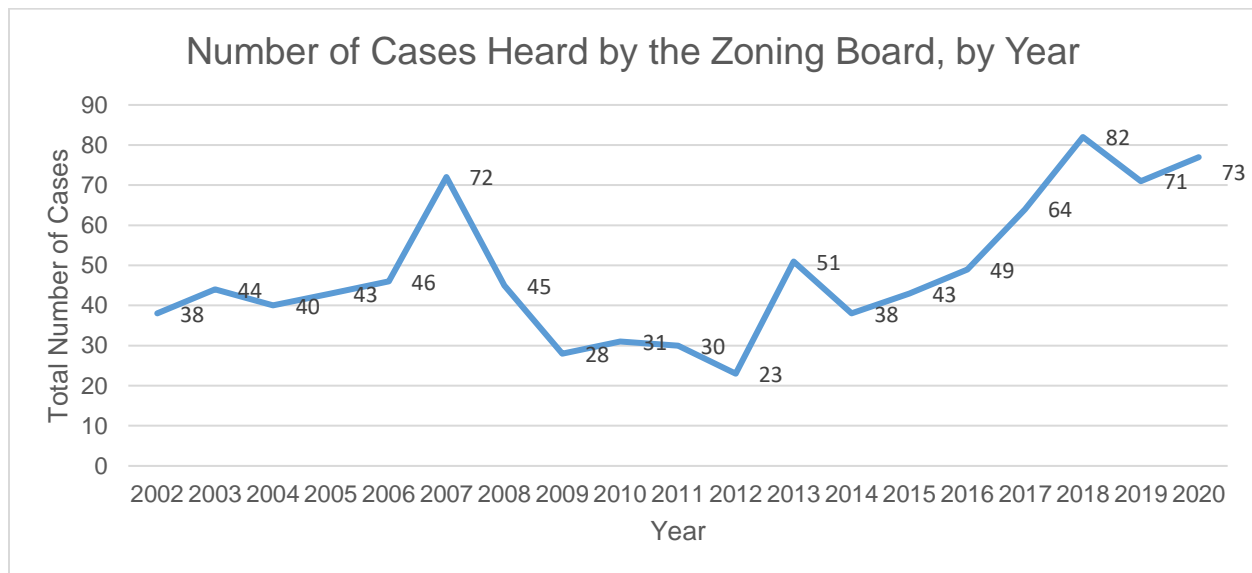
2020 Findings

In 2020, the Zoning Board of Adjustment heard 73 applications.

69 of these were approved, 1 was denied, 2 were withdrawn, and 1 appeal was denied.

Based solely on the applications that were either approved or denied, the Zoning Board approval rate is **94%**.

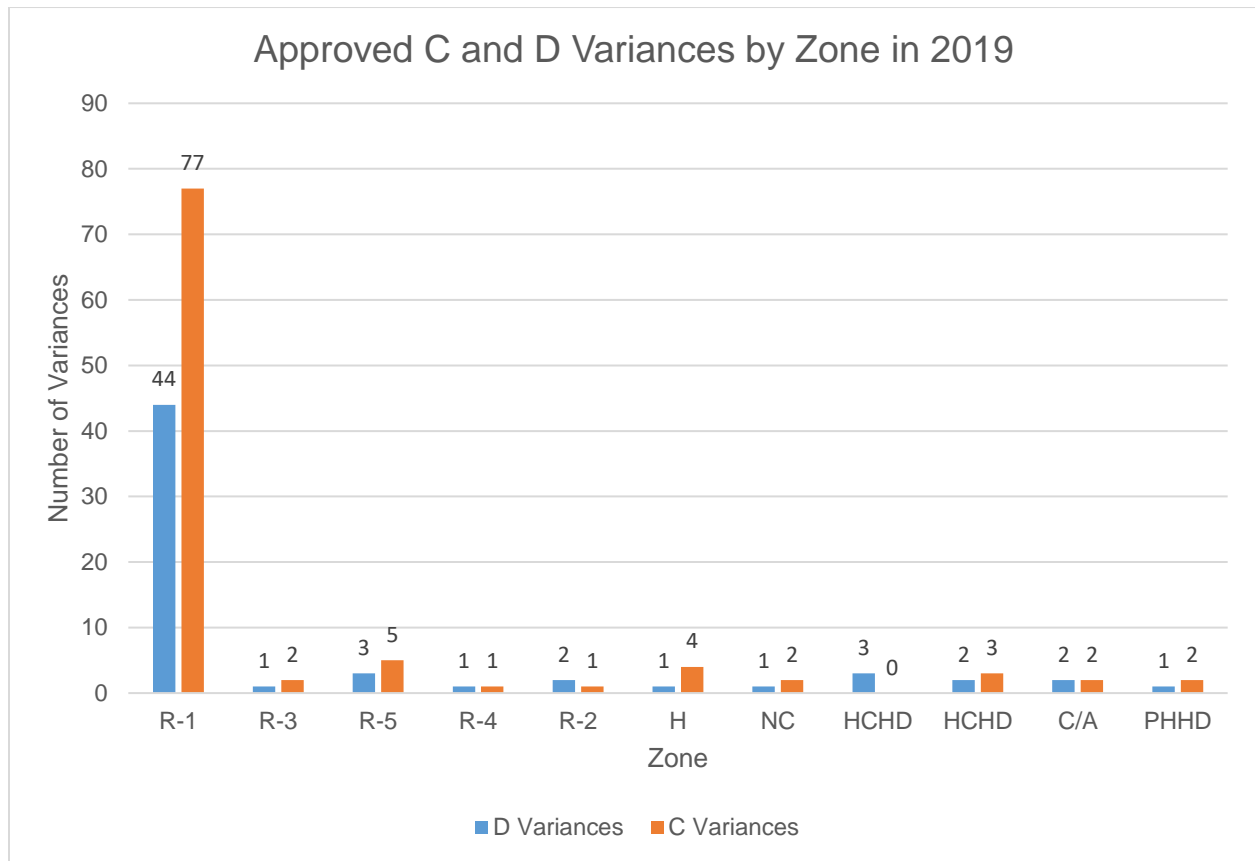
In 2017 and 2018, the approval rating was 92% with 82 applications being heard in 2018 and 74 of those applications being approved. In 2019, the Zoning Board of Adjustment heard 71 applications. 69 of these were approved, 1 was denied, 3 were withdrawn, and 1 appeal was granted. Based solely on the applications that were either approved or denied, the Zoning Board approval rate is 97%.



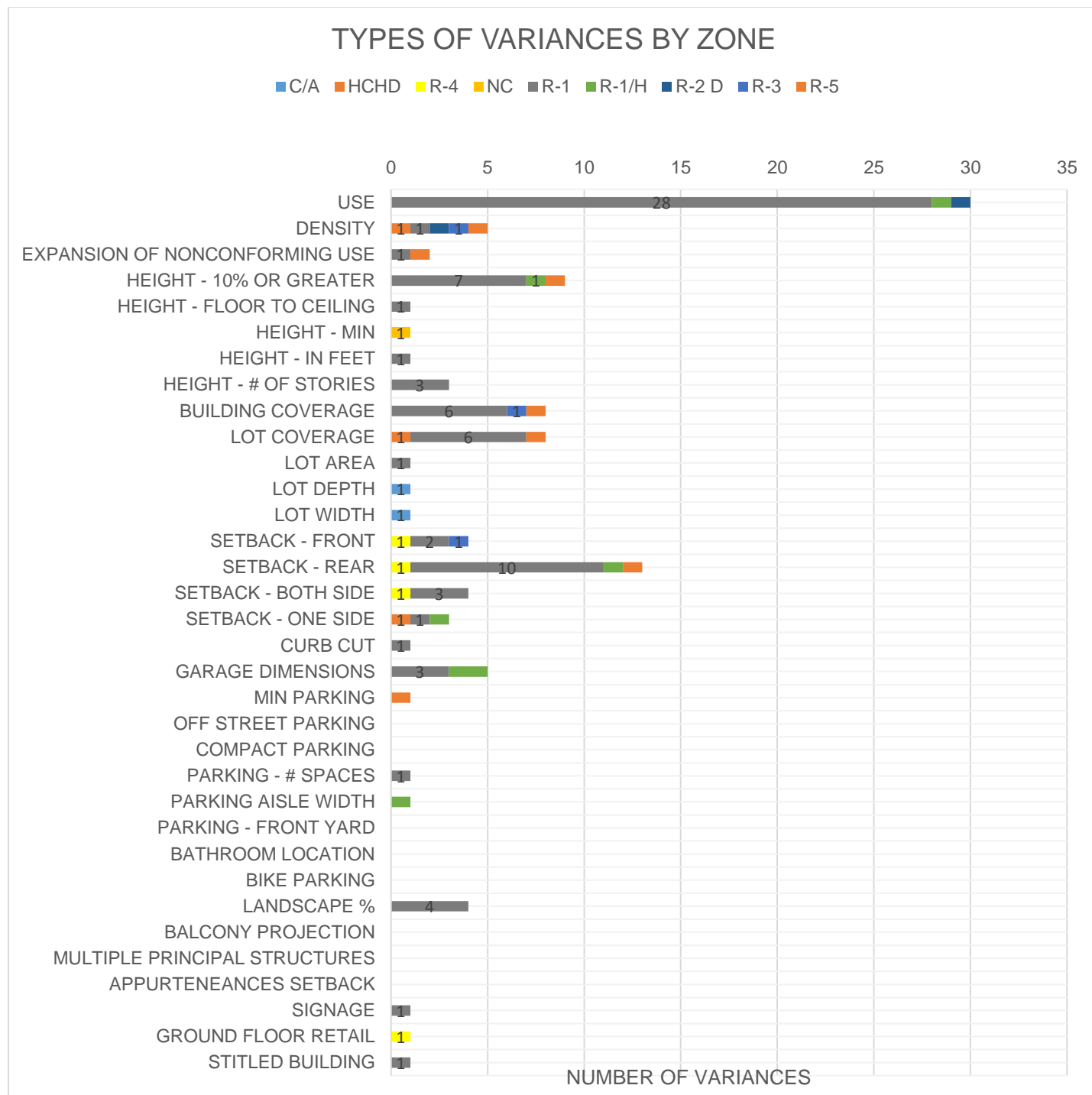
In total, **157** Variances were granted in 2020. Of the cases heard, 27, or 42%, included approval of a Site Plan and 2 cases included a subdivision. The Board granted 10 Site Plan Amendments, which is significantly greater than 2019 when only 2 site plan amendments were granted.

In total, 60 cases heard by the board included D variances. 59 of these cases were approved, while one application with a use and height variance was denied. The table below provides a breakdown of D Variances by type.

Types of “d” Variances	D Variances Approved	D Variances Denied	% Total of approved D Variances
D(1) Use	37	1	61%
D(2) Expansion of a non-conforming Use	7	0	11%
D(5) Density	2	0	3%
D(6) Height exceeding 10%	14	1	25%
Total	60	1 (same app with two variances)	100%



Comparable to previous years, the majority of Variances were granted in the R-1 Zone. The graph below provides a breakdown of types of variances by zone.

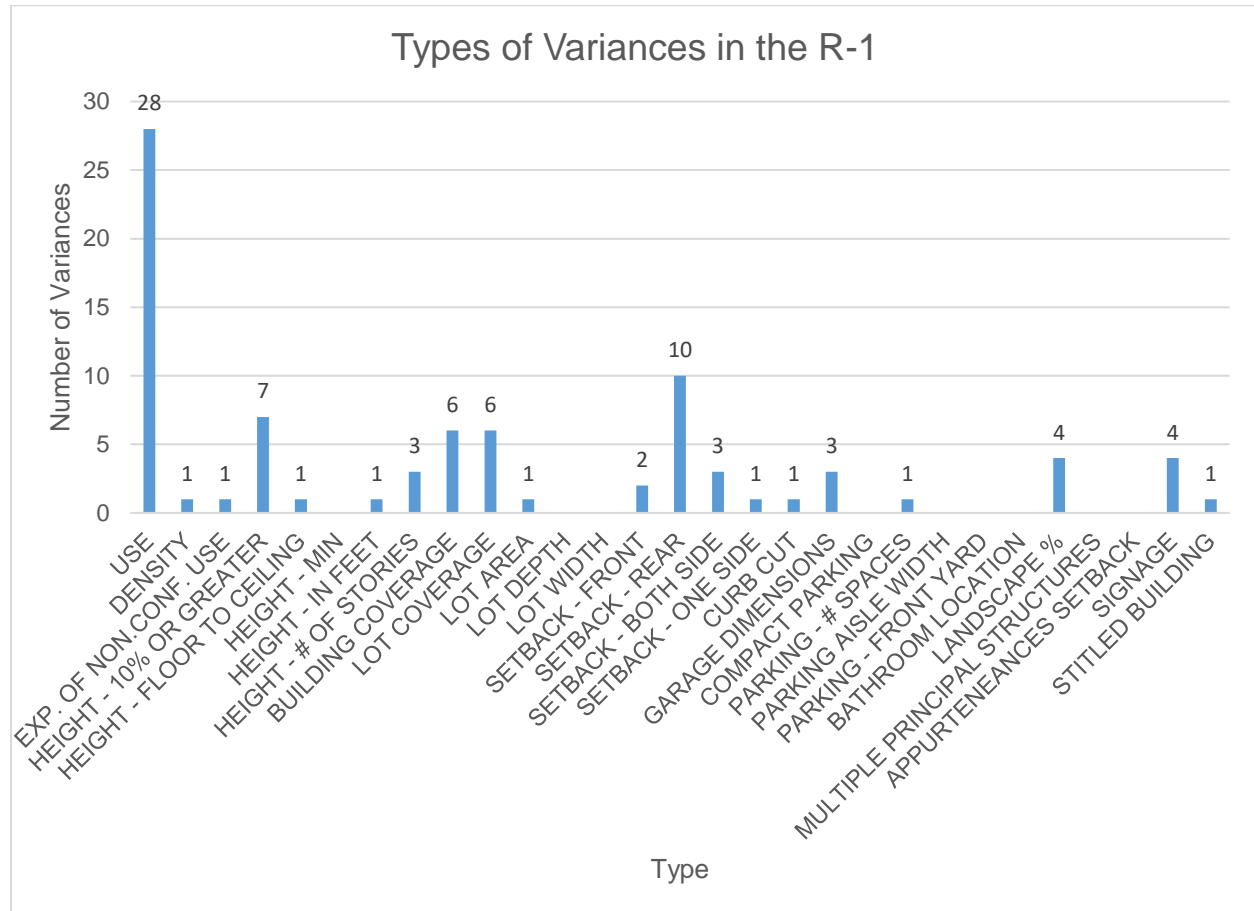


Zones where a significant amount of Variances were granted:

- 79% of all Variances granted were in the R-1 district, compared to 74% in 2019.
- 72% of all D Variances granted were in the R-1 district, compared to 80% in 2019.
- 77% of all C Variances granted were in the R-1 district, compared to 69% in 2019.

Significant changes from 2019 include:

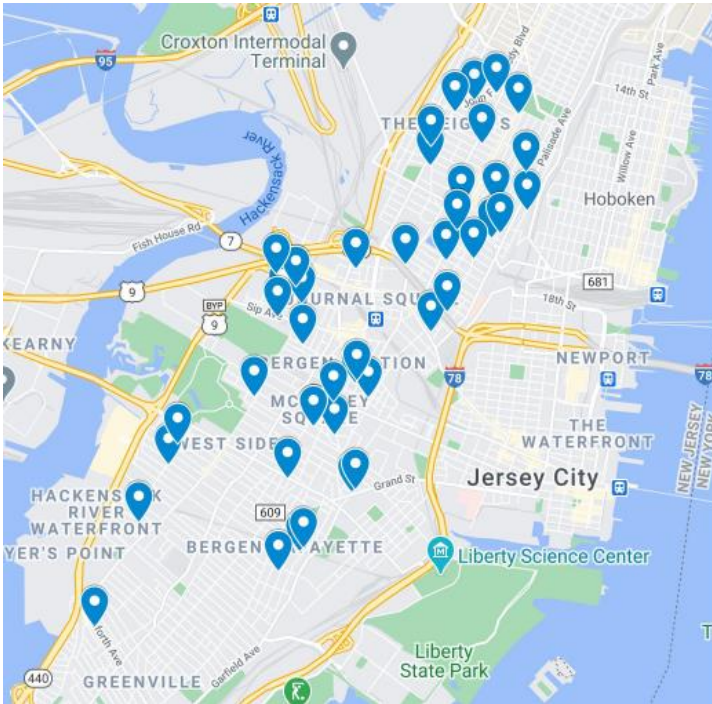
- In 2020, there was a greater percentage (8% increase) of C Variances granted in the R-1 district, compared to 2019.



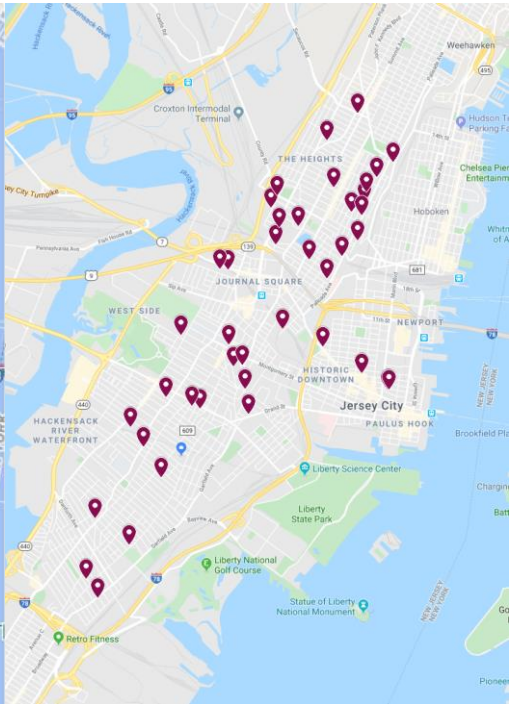
- Within the R-1 zone, 34% of Variances granted were for use.
- Within the R-1 zone, 8% of Variances granted were for height of 10% or greater than permitted.
- 4% of all Variances granted in the R-1 zone were related to parking standards. This includes number of spaces and minimum requirements for the size of the garage. 3 Variances for garage dimensions were granted in 2020, compared to just 6 in 2020.
- There were only 10 rear yard setback variances granted in 2020, compared to 15 in 2019.

Map of Locations for all D Variances in the R-1 zone

2020 “D” Variances in R-1



2019 “D” Variances in R-1



In 2020, there was a concentration of Use Variances in the “Heights”, “Greenville”, “Marion” and “McGinley Square” neighborhoods. In 2019, the bulk of “d” Variances were given in the “Heights” and “McGinley Square” neighborhoods.

Staff Recommendations

Article 9. Zoning Board of Adjustment

40:55D-70.1 Report on variance applications, amendment recommendations.

The Board of Adjustments shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendments or revision, if any. The board of adjustment shall send copies of the report and resolution to the governing body and planning board. (added by the 1985 amendments to the MLUL)

The legislative enactments requiring periodic reevaluation of municipal master plans and zoning ordinances, N.J.S.A. 40:55D-89, 40:55D-89.1, and annual reports and recommendations from the boards of adjustment, N.J.S.A. 40:55D-70.1, reflect a legislative policy intended to insure that a municipality’s master plan and zoning ordinance reflect contemporary needs and conditions, and the governing body is kept

informed of provisions the zoning ordinance that generate variance requests. This, the mandatory reexamination by the planning board of the master plan and zoning ordinance, at least every six years, (*now ten*) is intended to inform the governing body of the need for revision in the plan and ordinance based on significant changes in the community since the same such reexamination. Similarly, the annual reports by the boards of adjustment summarizing variance requests throughout the years and recommending amendments to the zoning ordinance are designed to avoid successive appeal for the same types of variance by encouraging the governing body to amend the ordinance so that such appeal will be unnecessary. When an informed governing body does not change the ordinance, a board of adjustment may reasonably infer that its inaction was deliberate.

Medici v. BPR Co., N.J. 1 (1987) (content in italics added by staff)

The first zoning legislation introduced in New Jersey was in 1918. The New Jersey Constitution was amended in 1927 to expressly authorize municipalities to zone. However, it is not until the ratification of the 1947 Constitution where municipalities were enabled the right to land use regulation within the designation of the police powers granted to the legislative branch.

Article IV, Section VI.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

Substantial amendments were made in 1948, 1949, and 1953. Mainly, these amendments introduced

- 1) The authorization of granting use variances based on special reasons (previously use variances were only granted with proof of undue hardship)
- 2) Introduction of the negative criteria for both “c” and “d” variances, “provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.”
- 3) Restricting the authority to grant “d” variances to the Zoning Board of Adjustment

The first Jersey City Zoning Ordinance was created in 1931, and included 5 districts: 2 residential, 1 business, and 2 industrial. The zoning ordinance was amended in 1957, 1963, but it is not until the 1974 zoning amendment that the delineated zoning districts begin to look more like what currently exists:

R-1, Low Density Residential,
R-2 Low Density Residential,

R-3 and R-3A Medium Density Residential,
R-4 High Density Residential,
C-1 Central Business District,
C-2 Office and Retail,
C-3 Shopping Center,
C-4 Finance and Business District,
I-1 Automotive, Construction, Office,
I-2 Intensive Industrial,
and I-3 Industrial Park.

For illustrative purposes, here are some examples of what would have been permitted in the four residential districts:

- The R-1 permitted a 3-story 1 or 2-family house on a 25x100 lot.
- The R-2 permitted 1 and 2 families, along with townhouses, and garden apartments. All residential buildings were permitted to 4 stories or 40 feet, 2-family housing on a 2,500 sq ft lot was permitted the highest density at 35 units per acre. Retail and offices were permitted on the ground floor of garden apartments and had to have access to one of the following streets:

Hudson Boulevard (J.F. Kennedy Boulevard) north of Newark and New York Railroad; Summit Avenue north of Sip Avenue; Palisade Avenue; Newark Avenue; Montgomery Street; West Side Avenue north of Lincoln Park; Jackson Avenue (MLK Dr.); Ocean Avenue; and Communipaw Avenue

- The R-3 and R-3A permitted all the uses from R-2 with the addition of medium rise apartments. The density, height and bulk standards also remained the same, but now medium rise apartments were permitted at 10 stories or 100 feet on minimum lot sizes of 40,000 sq ft at 60 units an acre. Retail sales and offices were permitted in medium rise apartments that were at least 6 stories and faced a street that had regular bus service or was classified as a collector or arterial street.
- Finally, the R-4 again permitted all of the prior residential uses with the addition of high rise apartments. High rise apartments were regulated by floor area ratio with a maximum density of 90 units per acre.

The City continued to make amendments to the 1974 overhaul up until the introduction the today's current zoning: the Jersey City Land Development Ordinance adopted in 2001. However, none of the amendments from 1974 to 2000 have as many drastic changes as the ordinances from 1951, 1963 and 1974.

The biggest change in the 2001 Land Development Ordinance zone change would be to take all the lots zoned R-1 and R-2 and combine them to be our current version of R-1, simply a 3-story 1-or 2- family house on a 25x100 lot. Historically, there were very few lots zoned R-1, one and two family housing, and the majority (near entirety) of the low-rise residential would be zoned R-2. The prior R-2 zoned by density, permitted 4 stories, townhouses, garden apartments, and in some location ground floor retail. In fact, the zoning 1963 and before always permitted apartment houses and rooming houses in the areas now only permitting 1 and 2 family housing.

From a historic perspective, the type of zoning and the time it was created makes sense based on current Federal policy and Supreme Court land use decisions.

The 1931 ordinance came after the Village of Euclid, Ohio v. Ambler Realty Co. (1926). Jersey City's first zoning ordinance in 1931 until 1963 are clear examples of Euclidean zoning (single-use zoning).

The 1974 Zoning Ordinance begins to introduce mixed uses where in the residential zones, ground floor retail is also permitted. Performance zoning started to become incorporated into the code and the code started to provide additional regulations for uses that would limit the negative impacts it could have. This, of course, does not take into account the impact of redevelopment plan areas which would have been permitted as early as 1947, and today half the of City lies in a Redevelopment Zone.

The 2001 Jersey City Land Development Ordinance, currently used today with amendments as recent at 2017 represents hybrid zoning. Amendments are based on a variety of reasons, some being market forces, as shown by the annual number of zoning applications. (2009 marks The Great Recession) This argues further in favor of the need to correct zoning.

Chapter 345 Zone Changes that were made in 2020:

1. F Overlay—Flood Prone District.

Added 6-24-2020 by Ord. No. 20-044]

The purpose of this subsection is to help protect development in flood prone zones, as defined as VE and AE FEMA Zones, from future flood damage and to encourage resilient design in vulnerable zones. The F Overlay provides additional green infrastructure and resilient design requirements for properties in flood prone zones. These requirements are calculated as a green area ratio (GAR) as explained in § 345-66.1.4. The F Overlay zone shall prevail upon all land regulated under this Chapter, as well as those properties within a duly adopted redevelopment area. Redevelopment plans shall be amended, or initially written, as the case may be, to refer to or include the requirements of this subsection.

2. § 345-66.1. - Green area ratio (GAR) standards. Added 6-24-2020 by Ord. No. 20-044 .Purpose.1.Green area ratio (GAR) requirements are green infrastructure and resilient design requirements. These requirements are calculated as a green area ratio (GAR) as explained below.2.The purpose of GAR is to integrate sustainable landscape elements into site design to address environmental concerns citywide.

Building Permits Authorized for Jersey City

Building Permits, By Year				
	2017	2018	2019	2020
Jersey City	3,656	3,850	6,365	4,656
Hudson County	7,403	6,205	8,596	
New Jersey	25,961	26,048	30,770	

The data indicates a decrease in growth in the number of units authorized via building permits issued for development in Jersey City.

The previous annual zoning reports suggest the following -

Prior annual zoning reports recommendations yet to be addressed, but still relevant:

- 1) A complete re-write of Jersey City Master Plan
- 2) A complete analysis of the parking standards in the R-1 zone for 1 and 2 family housing.
- 3) Analysis of the “Marion”, “Heights”, “McGinley Square” and “Greenville” section should be conducted to determine if R-1 zoning is the most appropriate zoning. 2020 variances for this neighborhood were related to the intensity of use and density.
- 4) Re-Zoning of the Northern Part of J.F. Kennedy Boulevard from R-1 to R-3 or NC, or whichever is the most appropriate that allows for a commercial or office ground floor.